IN THE HIGH COURT OF JUDICATURE AT PATNA
SA No.154 of 1992
RAJNISH KUMAR TIWARY
Versus
RAM AYODHAYA SINGH & ANR

05/ 10.07.2008 Heard learned counsel for the appellant.

This second appeal arises out of Title Suit No. 73 of 1982 which was filed by plaintiff-appellant-appellant for declaration of his title over schedule-III properties of the plaint as well as for injunction and other ancillary reliefs.

The said suit was dismissed by the learned Additional Subordinate Judge-VII, Patna vide judgment and decree dated 28.02.1986 which was challenged by the plaintiff-appellant in Title Appeal No. 48 of 1986 which was also dismissed by the learned Additional District Judge-XIII, Patna vide judgment and decree dated 05.03.1992. Against the aforesaid judgments and decree of the learned courts below the plaintiff-appellant has filed the instant second appeal.

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From perusal of the impugned judgments and decree of the learned courts below, it is quite apparent that both the learned courts below have specifically found that Harikishun Sao had two sons, Deochand Sao and Rooplal Sao, out of whom Harikishun Sao and Deochand Sao died before 1918, whereafter second son of Harikishun Sao, namely, Rooplal Sao along with three sons of late Deochand Sao inherited the ancestral property which was jointly recorded in their names. It was also found by the learned courts below that in the year 1918 there was a partition between Rooplal Sao and the sons of Deochand Sao, whereafter Rooplal Sao was fully entitled to transfer his property to anyone and hence, he gifted his property (suit land) to

Balgovind Sao by gift deed dated 01.08.1919 and on that basis the said Balgovind Sao came in possession over the suit property and was recorded in Register-II and also got his name mutated. Learned courts below also found that the defendants failed to prove partition between sons of Deochand Sao in the year 1935-1936 whereas the petition for mutation filed by Doma Sao claiming 1/3rd share was also rejected by the authority concerned.

In the said circumstances the learned courts below rightly came to the conclusion that Doma Sao had no right or share in the suit property and hence, the deed executed by him in favour of the plaintiff was not valid. Learned courts below further concurrently found that the gift deed executed by Rooplal in favour of Balgovind was throughout acted upon and the donee continuously remained in possession over the suit land and in any view of the matter a judgment in Money Suit(Exhibit-6)cannot operate as res-judicata specially when the land involved in the present suit was not the subject matter of the money suit.

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In the aforesaid facts and circumstances, this court does not find any illegality in the impugned judgments and decree of the learned courts below nor does it find any substantial question of law involved in the instant second appeal, which is accordingly dismissed.

harish/ **(S.N.Hussain, J.)**